

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
(June 2000 Session)

**PATRICIA M. CAMPBELL, v. CITY OF TULLAHOMA, ET AL.**

**Direct Appeal from the Circuit Court for Coffee County  
No. 98-109 John W. Rollins, Judge**

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**No. M1999-01235-WC-R3-CV - Mailed - July 26, 2000  
Filed - September 1, 2000**

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The appellant, Campbell, insists the trial court erred in granting the appellee's motion for discretionary costs because no equitable ground for such relief was asserted in the motion and accompanying affidavit. The panel concludes that the plaintiff's voluntary dismissal of her complaint is a sufficient ground for an award of discretionary costs.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court affirmed.**

LOSER, SP. J., delivered the opinion of the court, in which DROWOTA, J., and TURNBULL, SP. J., joined.

Tripp Steven Fried, Franklin, Tennessee, for the appellant, Patricia M. Campbell.

Frank Thomas and Hal W. Wilkins, Nashville, Tennessee, for the appellees, City of Tullahoma and American International Underwriters, Inc.

**MEMORANDUM OPINION**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. As discussed below, the panel has concluded the judgment should be affirmed.

The claimant, Patricia M. Campbell, initiated this civil action against the defendants, City of Tullahoma and American International Underwriters, for workers' compensation benefits, on March 20, 1998. The defendants, by their answer, denied all material averments of the complaint and an amended complaint later filed by consent. On April 8, 1999, the claimant served a notice of voluntary dismissal. The trial judge signed an Order of Dismissal Without Prejudice on April 15, 1999.

The defendants then made a timely motion for an award of discretionary costs, accompanied by an affidavit that they had incurred court reporter's fees of \$1,130.75 for the taking of four depositions. The motion was also accompanied by invoices from the court reporter. The motion said:

"Comes now the Defendants, City of Tullahoma and American International Underwriters, Inc., pursuant to Rule 54.04 of the Tennessee Rules of Civil Procedure, and moves this Honorable Court to award discretionary costs to the Defendants in this action. In support of this Motion, the Defendants attach the Affidavit of Frank Thomas setting out the allowable discretionary costs which are being claimed in this action. This action was originally filed on March 20, 1998. A Notice of Voluntary Dismissal/Nonsuit was filed on April 8, 1999. Tennessee Rules of Civil Procedure Rule 54.04 allows discretionary costs to be awarded a party in the event of a voluntary dismissal."

The trial judge granted the motion. The appellant, relying on Depriest v. 1717-19 West End Associates, 951 S.W.2d 769 (Tenn. Ct. App. 1997), contends the trial court erred by allowing discretionary costs because the affidavit in support of the motion did not state equitable grounds for such relief. Since there is no factual dispute, appellate review is de novo without any presumption of correctness. Presley v. Bennett, 860 S.W.2d 857 (Tenn. 1993).

Tenn. R. Civ. P. 54.04(2) provides as follows:

“(2) Costs not included in the bill of costs prepared by the clerk are allowable only in the court’s discretion. Discretionary costs allowable are: reasonable and necessary court reporter expenses for depositions or trials, reasonable and necessary expert witness fees for depositions or trials, and guardian ad litem fees; travel expenses are not allowable discretionary costs. Subject to Rule 41.04, a party requesting discretionary costs shall file and serve a motion within thirty (30) days after entry of judgment. The trial court retains jurisdiction over a motion for discretionary costs even though a party has filed a notice of appeal. **The court may tax discretionary costs at the time of voluntary dismissal.**” (Emphasis supplied).

In Depreist, the Court of Appeals reversed an award of discretionary costs because the motion was unsupported by an affidavit of grounds and because “the brief of appellants cite(d) no part of the record supporting the award of such costs.” That case is distinguishable from the present case in that the ground for the present award, voluntary dismissal, is stated in the motion, clearly reflected by the record and undisputed. The ground for the motion in the present case was obvious and apparent to the trial judge. Moreover, we conclude from the language of the Rule 54.04(2) that voluntary dismissal is a sufficient ground for awarding allowable discretionary costs.

For the above reasons, the panel finds no abuse of discretion and affirms the judgment. Costs on appeal are taxed to the appellant.

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**JUDGMENT**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM